**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**Criminal Writ Petition No.2479 of 2004.**

Smt. Vijaya Vedprakash Patil ..Petitioner

Versus

Smt.Manem Balayya Dussa & Ors ..Respondent

Smt.Vijaya V. Patil, present in person in the Court
Shri S.V.Kotwal appointed as Amicus Curi on behalf of the Petitioner.
Shri D.S.Mhaispurkar, APP for the State.

**CORAM: S.B.MHASE &**
**S.R.SATHE, JJ.**

**DATE : 18th Oct., 2005**

**Judgment (Per S.R.Sathe, J.)**

1. Petitioner-the Original Complainant in Criminal Case No.273 of 2004, filed in the Court of JMFC, 3rd Court has filed this petition under Article 226 of the Constitution of India.

2. The Petitioner's case in brief is that Sham Vitthal Bhuddat and Vajrabai Vitthal Bhuddat (Original accused Nos.1 and 2 in Criminal Case No.273 of 2004) took forcible possession of the Petitioners house. She therefore filed Civil Suit in the Court of CJSD, Solapur. As decree was passed against the said original accused Nos.1 and 2, they got annoyed and they

filed a false case against the Petitioner and her sister-deceased Tolan Bhagwan Thonge-Patil.

3. On 6.2.2004, when the Petitioner's sister Tolan Thonge-Patil was proceeding from Gandhinagar locality, the original accused Nos.1 to 4 gave threats to her. Then on 7.2.2004 the Petitioner's sister committed suicide. According to the Petitioner, the original accused Nos.1 to 4 abetted the commission of the said suicide and the Original accused Nos.5 to 7, who are Police Officers prepared false documents by joining hands with Original Accused Nos.1 to 4. The Petitioner, therefore, filed private complaint bearing No.RCC 273 of 2004 in the Court of JMFC, 3rd Court, Solapur, against accused Nos.1 to 4 for the offences punishable under Section 380, 306 r/w. 34 of Indian Penal Code. It was also alleged that the accused Nos.5 to 7 helped accused Nos.1 to 4 in the commission of the said offence.

4. On receipt of the said complaint the learned JMFC directed the Commissioner of Police, Solapur, to investigate the matter under Section 156(3) of Cr.P.C.

5. As per the directions of the learned JMFC, the Police carried out the investigation under Section

156(3) of Cr.P.C. and submitted report dated 7.7.2004 to the JMFC, Court No.3, stating therein that there was no material to show that the accused burnt Tolan Thonge-Patil, or that they abetted the Commission of her suicide. When the said report was pending for consideration before the learned JMFC, Court No.3, the Petitioner filed the present petition alleging that the death of Tolan Thonge-Patil has taken place in suspicious circumstances and the Police did not properly investigate the cause of her death. She, further prayed that the Central Bureau of Investigation be directed to investigate the exact cause of death of Tolan Thonge-Patil and the Respondent Nos.6 to 9 be directed to pay compensation of Rs.2,00,000/- to the Petitioner.

6. This Court was pleased to issue Rule on 21.12.2004. The Respondents filed their affidavit and submitted that the Assistant Commissioner of Police, Division No.2, Solapur has recommended ‘B’ Summary in the matter. However, the leaned JMFC did not pass any order on the same.

7. On 18.3.2005, this Court directed the JMFC, Court No.3, Solapur to hear the parties in the matter and pass an appropriate order and to conclude the

entire proceeding within a period of six months from 5.4.2005.

8. As per the directions issued by this Court, the learned JMFC gave opportunity to both the parties and heard their submissions. He, however, found that the police had not recommended 'B' Summary but had only submitted negative report, and as such there was no question of passing any order with regard to granting of summary. He also found that the alleged offence had taken place within the territorial jurisdiction of the Court of JMFC No.2, Solapur. He, therefore, requested the Sessions Judge, Solapur to transfer the Regular Criminal Case No.273 of 2004 to the Court of JMFC, Court No.2, Solapur.

9. The Petitioner/Original Complainant appeared in person and made submissions before us. As she had not engaged any advocate, we thought it fit to appoint Shri S.V.Kotwal as Amicus Curi in the matter.

10. After hearing the Complainant as well as Shri Kotwal and the learned APP Shri Mhaispurkar, it has been noticed that a private complaint was filed by the Petitioner in the Court of JMFC, Court No.3, wherein it was alleged that the accused have committed offences

punishable under Section 380, 306 r/w.34 of I.P.C. As the offence under section 306 of I.P.C. was exclusively triable by the Court of Sessions, the learned JMFC could have resorted to the provisions under Section 202 of Cr.P.C. However, the learned JMFC directed the police to investigate the matter under Section 156(3) of Cr.P.C. The learned Advocate Shri Kotwal as well as the learned APP submitted that though the offence disclosed in the private complaint filed by the Petitioner was exclusively triable by the Court of Sessions, the learned JMFC was not debarred from sending the case to police for investigation under Section 156(3) of Cr.P.C. For this reliance has been placed on a case **Devarpalli Laxminarayan Reddy v/s. V. Narayan Reddy reported in AIR 1976 SC 1672.** There is substance in the submission mentioned above. However, we find that once the learned JMFC had resorted to sending the matter to the Police for investigation under Section 156(3) of Cr.P.c., it was necessary for him to consider the report submitted by the Police and then to take further necessary steps. Even at that stage it was open for him to record the statement of the complainant and hear witnesses as contemplated under Section 202(a) of Cr.P.C. But, it seems that the learned JMFC has not taken any further steps on the receipt of police report.

11. From the report submitted by the police it appears that they have recorded the statement of the five witnesses. However, it is pertinent to note that the police have not recorded the statements of most of the witnesses who are cited by the Petitioner in her private complaint No.273 of 2004. Having regard to the above position we are of the view that the facts and circumstances of this case do not warrant investigation by C.B.I. and the Petitioner's prayer in that behalf is to be rejected.

12. From the perusal of the record and in particular, the copy of the letter send by JMFC, Court No.3 to Sessions Judge on 4.6.2005, it is revealed that the offence has taken place within the jurisdiction of the Court of JMFC, Court No.2, Solapur. Hence, the JMFC, Court No.2, Solapur, is hereby directed to record the statement of the witnesses cited by the Complainant in the Criminal Case No.273 of 2004. If any other witness is cited by the complainant, the same be examined. The JMFC, Court No.2 to consider the said statements as well as the statements recorded by police during investigation under Section 156(3) of cr.P.C. and other material collected by the police during the inquiry of A.D.No.14 of 2004 as well as during the

inquiry under Section 156(3) of Cr.P.C. After considering the above material and statements, the concerned Magistrate to pass appropriate order and conclude the proceeding before him within two months from today and submit report in that behalf to this Court.

14. The Complainant and the Investigating Officer to appear before the Court of JMFC, Court No.2, Solapur on 14.11.2005 at 11.00 a.m.

15. Rule made absolute in the above terms.

16. Fees off Amicus Curi Shri Kotwal are quantified at Rs.1000/- (Rupees One Thousand Only).

17. The Record and Proceeding be immediately sent to the Court of JMFC, Court No.2, Solapur.

(S.R.Sathe, J.) ( S.B.Mhase, J.)